

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

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CRM-M-26621-2021.

Date of Decision: 17.09.2021.

Sunil Kumar

....Petitioner.

Versus

State of Haryana

....Respondent.

CORAM: HON'BLE MR. JUSTICE LALIT BATRA

Present: Mr. Sandeep Kumar Tada, Advocate for petitioner.

Mr. Vikrant Pamboo, Deputy Advocate General, Haryana.

Lalit Batra, J.(Oral)

This petition under Section 438 Cr.P.C. has been moved by petitioner-**Sunil Kumar** for grant of pre-arrest bail in case FIR No.46 dated 18.03.2021 under Section 377 IPC read with Section 34 IPC and Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “SC/ST Act”), registered at Police Station Loharu, District Bhiwani.

Learned counsel for the petitioner *inter alia* contends that allegations levelled in the FIR are totally concocted, false and frivolous and there is no iota of truth therein. He further urges that allegedly on 17.03.2021 at about 12:00 noon, co-accused Deepak on the pretext of some labour work asked victim, a mentally retarded youth, to accompany him and then he took him to an abandoned house, where he (Deepak) alongwith co-accused namely Sunil Kumar, Pardeep and Vikas made victim to consume liquor and smoke and then in the intoxicated condition of victim, accused persons knowing fully well that victim belongs to Scheduled Caste, they

committed carnal intercourse against the order of nature with above said victim. He further urges that no document showing mental condition of victim has been produced. He further submits that though victim was medico-legally examined on 19.03.2021, but the act to constitute offence punishable under Section 377 IPC has not been found by the doctor concerned. He further urges that as a matter of fact there was some monetary dispute between the petitioner and victim, which has been given colour of criminal offence. He further urges that no case invoking the offence under Section 3(2)(v) of SC/ST Act is made out against the petitioner as petitioner himself belongs to Scheduled Caste. He further submits that though petitioner has no nexus whatsoever with the alleged offence, he is ready to join investigation as and when called upon to do so by the Investigating Agency, thus, concession of pre-arrest bail may be extended to him.

On the other hand, learned State counsel while opposing the cause of petitioner has vehemently argued that petitioner alongwith co-accused namely Deepak, Pardeep and Vikas committed carnal intercourse against the order of nature with the victim, a mentally retarded youth and that too after having made him intoxicated. He further urges that medico-legal report (Annexure R-1) highlights injury on the person of the victim. He further urges that victim is having Mild Mental Retardation and his IQ level is 54, as is evident from medical examination report dated 02.08.2021 (Annexure R-2) issued by Medical Board of the Institute of Mental Health, Pt. B.D. Sharma UHS, Rohtak. He further urges that petitioner has been specifically named in the FIR and in view of nature of offence committed by him, his custodial interrogation is required to unveil the truth and as such he

is not entitled for the concession of pre-arrest bail.

I have heard learned counsel for the parties and have carefully gone through the contents of petition, status report dated 03.09.2021 filed by respondent-State as well as record of the case.

Without commenting anything on the merits of the case, lest it may prejudice the case of either of the parties, allegedly petitioner alongwith co-accused namely Deepak, Pardeep and Vikas committed carnal intercourse against the order of nature with the victim, a mentally retarded youth and that too after having made him intoxicated. Pre-arrest bail is not to be granted as a matter of routine/course in all cases. The grant or refusal of such bail depends on the variety of circumstances, the cumulative effect of which, should enter the judicial verdict. The power under Section 438 Cr.P.C. is to be exercised sparingly and in exceptional cases keeping into focus the facts and circumstances of each case. At the same time, it is well-settled that the order of anticipatory bail cannot be allowed to circumvent normal procedure of arrest and investigation by the police. The Court has also to see that the investigation is in the province of the police and an order of anticipatory bail should not operate as an in-road into the statutory investigational powers of the police, in exercising the judicial discretion in granting the anticipatory bail. The Court should not be unmindful of the difficulties likely to be faced by the Investigating Agency and the public interest likely to be affected thereby in this relevant connection. In a given situation, custodial interrogation of petitioner is certainly required for complete and effective investigation. In case, same is denied to the Investigating Agency that shall leave many glaring loopholes and gaps, adversely affecting investigation, which is uncalled for. Keeping in view

totality of entire scenario and nature of offence, no extra-ordinary ground has been made out in favour of petitioner for his entitlement of pre-arrest bail.

As a sequel to above, instant petition for grant of pre-arrest bail moved by the petitioner is dismissed.

(LALIT BATRA)
JUDGE

17.09.2021
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Whether speaking/ reasoned : Yes/ No
Whether Reportable : Yes/ No